IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.984 OF 2005

WITH

CIVIL APPLICATION NO.1348 OF 2005

Smt.Krishnabai Shiva Mali ..Appellant.

Vs.

Sawanta Tukaram Mali ..Respondent.

....

Mr.V.B.Rajure for the Appellant.

Mr.S.M.Mirajkar for Respondent No.1.

....

**CORAM : DR.D.Y.CHANDRACHUD, J.**

12th December, 2005.

P.C. :

The First Appellate Court has remanded the suit back to the Trial Court for framing an issue in relation to tenancy as follows :

"Whether deceased Shiva and present

> Defendant No.1, Sawanta Tukaram Mali were co-tenants in the suit land, Gat No.251, Old R.S. No.22, Hissa No.3, of Mouje Sangaon Tal. Kagal?

At this stage, the order of the First Appellate Court cannot be faulted. The First Appellate Court was justified in holding that unless the Plaintiffs' status as co-tenants has been adjudicated upon by the Tenancy Court, the Civil Court cannot proceed further with the matter. In the circumstances, the order of the First Appellate Court does not warrant any interference. This Appeal from Order is accordingly dismissed.

In view of the disposal of the Appeal from Order, the Civil Application is rendered infructuous and is accordingly disposed of.